Scott. II.27—40,006—20-12-38

Home (1936) Department

SERIES

G.O. No. 167

Dated 10/4/40

D8

[Despatch Abstract]

Summary of Appeal
against requisition C.O. No
793/39 on the file of the
Submagistrate
Bellary declined

C.F. 32. 4285)

Magisterial DEPARTMENT.

In reply, please quote number, date and short title.*

*Received*_____ *Registered*_____

From (Name) A.D. Cromoie Esq., C.I.E.,I.C.S.,

(Designation) District Magistrate,

Post Box_____, (Station) Bellary.,

Telegraphic Address _____

To

The Secretary to Government,
Home Department, M a d r a s.

C. *No.*1205/39-E-1 *dated* 17-12-39. 19

Sir,

Criminal justice - C.C.No.793/39 on the file of the Stationary Sub Magistrate, Bellary - Appeal against acquittal under section 417 Cr.P.C.

Enclosures_____.
Case Records by
legal Pur.
Spare Copies_____.
English Trans-
lation

(not printed)

— not read.

e Commissioner, Bellary under
.P.C.

rchant of Bellary, was
ary Sub Magistrate, Bellary oy
r section 5(1)(b) and rule 28
use(f) sub section 2 of section
P.H. dated 28-11-35 of the
ation Act 1918 for having
stored and offered for sale on 13-4-1939 ghee adulterated with 80% of fat not derived from milk or cream. The accused was acquitted.

Judgment
at pp. 3-6
of (D)

2. The facts of the case are briefly as follows:-

On 13-4-39, the sanitary Inspector of the A. Division of the Bellary Municipality went to the shop of the accused, purchased a seer of ghee for a sample from a tin stored in the shop and obtained a receipt for the transaction. He divided the sample ghee into three parts, bottled and sealed them in the presence of the accused and another witness. Then he informed the accused that one of the sample bottles should be kept by the latter, as it was intended that the sample should be sent for analysis. The accused refused to take the bottle. The sample, having been analysed by the Government analyst, was certified to contain 80% of fat mixed with 20% of ghee.

P.T.O.

Therefore

The accused was charged as stated above. The Sub Magistrate, in acquitting the accused, has observed that the accused could not be prosecuted for selling a variety of food within the easy reach of every consumer and that the sanitary Inspector was not ~~xxxxx~~ informed at the time of purchase that the ghee was being sold to him. The Stationary Sub Magistrate's observation in the case is obviously erroneous, as it is an offence to store adulterated products. The accused is a ghee merchant and adulterated ghee was found in his stock. The accused denied that a sample was taken from him by the Sanitary Inspector. The Magistrate also raised a doubt about the identity of the adulterated ghee sent for analysis for reasons given in his judgment. The Sanitary Inspector having followed the procedure laid down in the rules on the subject, it was for the accused to defend his bonafides by receiving the sample bottle and giving a receipt for it. The fact ~~xxx~~ that the Sanitary Inspector purchased a seer of ghee from the identical vendor is proved by the cash bill granted by the accused. The Magistrate's doubt whether the sample No.98 analysed is the same product as that sold by the accused to the Saniatry Inspector is unreasonable. On the contrary the accused by his conduct in refusing to receive the sample from the Sanitary Inspector showed that he was trying to evade the law.

Judgment placed Cover at pp. 3-6 of (D)

3. The evidence of a corraborating witness on behalf of the prosecution remains unrebuttedd In view of the above facts, I am of opinion that this is a fit case in which the High court should be approached in appeal under Section 417 Cr.P.C. The Public Prosecutor Notary Bellary also considers it is a fit case for appeal.

4. The entire case records together with English translations of the depositions of witnesses and other documents are enclosed ~~x~~ for referenceand return. (D)

Abdul. Khan
19.XII.39
For District ~~Magistrate~~.

RPG/19-12

19.12.

3

Home Dept

Endt No. 42851F.1 d. 22.12.39

Criminal appeal-
Appeal against acquittal
C. C. No. 793/39 on the file
of the S. S. M., Bellary.
From the D P
Bellary C. No. 1205/39. E-1
d. 17. 2. 39

Referred to the
P. P. Madras for
early opinion as to
whether an appeal
against the acquittal
in the case cited above
is likely to be successful

J.

The P. P. Madras
(with C. P. Records) (D)
the retd with
reply

T 19
2 letters
PP
22.12
Today H.
Clerk
intn

In precedent please
see Endt on p. 7 of
C.O. 5683 Home at (A)
30-10-39

C. F

4

C.F. 30.

JUDICIAL **DEPARTMENT.**

Pet

Received 6- JAN1940 19 *Registered* 4377/6.1.40 19

Subject.

Appeal against acquittal - C.C. No.793/39 - Stationery Sub Magistrate, Bellary.- Forwarding opinion.

ENCLOSURES.
No. ..
.
Spare copies

Opinion No. 1/40.

Station Madras, *Dated the* 4th January 19 40.

From (Name) V.L. Ethiraj Esquire, Barrister-at-Law,
(Designation) Public Prosecutor.

To The Secretary to the Government of Madras,
HOME Department.

Sir,

P. 3 ants

With reference to Endorsement No. ~~42581~~ 42851 F-1, Home, dated 22nd December 1939, I have the honour to forward herewith my opinion in the matter.

(D)

2. The enclosures received with the endorsement are herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

V.L. Ethiraj

Public Prosecutor.

— P. 3 and 5.

ENDORSEMENT No.42581 F-1, Home, dated 22nd December 1939.

OPINION

The accused in this case was prosecuted for an offence under Section 5 (1) (b) of the Madras Prevention of Food Adulteration Act for storing and selling ghee which was proved to contain 80 per cent of fat not derived from milk or cream. The Sanitary Inspector, P.W.1 in the case, went to the shop of the accused and purchased a seer of ghee from him. He divided the sample into three parts and bottled and sealed them in the presence of the accused. He handed over one of the bottles to the accused but the accused refused to take the bottle.

The Magistrate on the evidence doubts the identity of the adulterated ghee sent for analysis and also finds that it has not been proved beyond doubt that the sample analysed was the ghee sold by the accused. It is not likely that the High Court would interfere on a question of fact in respect of which the Lower Court has given the benefit of doubt to the accused.

An appeal against acquittal is not likely to be successful.

Madras,
4th January 1940

V. L. Ethiraj
Public Prosecutor.

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Home F Deptt

(P. No. 42581/39)

Criminal appeal Appeal against acquittal - Cr.C. No. 793/39 on the file of the S. S. M., Bellary.

C.F. From the D. M. Bellary C. No. 1205/39-E-1 d. 17. 12. 39

The D. M. Bellary requests that an appeal may be filed against the Judgment passed by the S. S. M., Bellary acquitting the accused in Cr.C. No. 793/39 on his file. The Judgment was delivered on 17-7-39. Appeals against acquittals have ordinarily to be filed within three months of the date of the Judgment appealed against. In exceptional cases however, resort may be had to the statutory period of 6 months for filing an appeal. In the present case, the 3 months' time within which appeals have to be filed ordinarily, has expired already (on 17-10-39). If an appeal is to be sanctioned, the case will therefore, have to be treated as an

on pp. 3-6 of (D)

See A on p. 1 of G.O. 2127 Home (Jails) dt 18-9-1918 at (Y)

See B on p. 2 of G.O. 690 L.G. dt 24-6-21 at (X)

Date of Judgment is 17-7-39

7

42851 F

An exceptional case which justifies resort to the statutory period of six months. The question whether it should be regarded as an exceptional case, may be considered after the opinion of the P. P., Madras has been received.

A draft Endt. asking the P. P. to give his opinion is subd. for consideration

Rp
21-12.

U/ 24/12

[Issued as Endt. No. 42581 F-1 d. 22.12.39]

From the P.P., Madras Op. No. 1/40. d. 4.1.30

Bundle received on 17-1-40

E 42551 F

p. 3 c.F

(C. No. 437/40)
pp. 4-5 c.F

The opinion of the P.P. is that an appeal is not likely to be successful.

p. 5 c.F

A draft order declining an appeal is subd

Rp
6.1.

HG
8.1.40.

JU
9/1-1

S

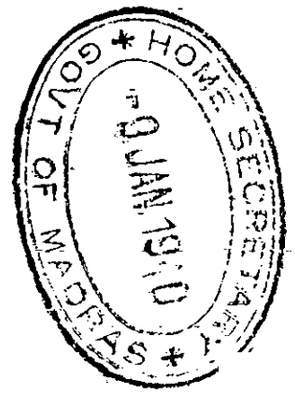
437 F/9/1

The S. M's judgment 11.3.6 of (2) - is a very stupid one and could, I fancy, easily be overturned, but the case is not worth taking up, almost 6 months later. Draft for approval.

9.1.40.

Addl.

9/1.40



Home Dept. I. 4—306—23-12-36.

Received _____ 193 . *Registered* _____ 193

Criminal appeal - **Appeal against acquittal—~~Negatived~~.**

C. Case No. 793/39 on the file of the Stationary Sub Magistrate, Bellary - Declined

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HOME DEPARTMENT.

READ—the following papers :—

From the District Magistrate, Bellary C. No. 1205/39 E. I. dt. 17.2.39, dated _____ 193 . pp. 1-2 cf

Endorsement to the Public Prosecutor, Madras, No. 42851 F. I Home d. 22.12.39, dated _____ 193 . p. 3 c.f

From the Public Prosecutor, Madras, Opinion No. 1/40 dated 4-1-1940 pp. 4-5

ORDER—Mis. No. 167, **dated** 10.1.1940

The Govt. do ~~The Government do~~ not consider it advisable to appeal to the High Court against the judgment of the Stationary Sub Magistrate, Bellary acquitting the accused in C.C. No. 793 of 1939 on his file.

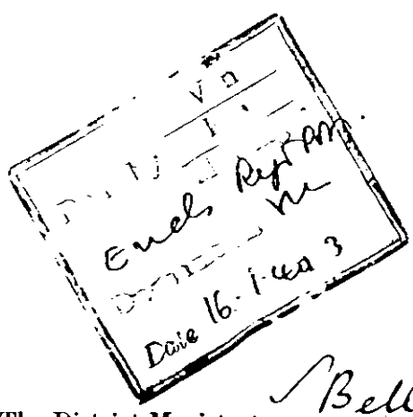
(~~True Extract.~~)

O/C

9/1

9.1.40.

Secretary to Government.



Rp 6.1. VVS 8.1.40

To

The District Magistrate, Bellary (with a copy of p. 3 c.f. and records retd)

The Public Prosecutor, Madras.